

Decision 02-07-040 July 17, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the  
Commission's Future Energy Efficiency Policies,  
Administration and Programs.

Rulemaking 01-08-028  
(Filed August 23, 2001)

**INTERIM OPINION REALLOCATING FUNDING PREVIOUSLY  
AWARDED TO THE DEPARTMENT OF CONSUMER AFFAIRS'  
*FLEX YOUR POWER* ENERGY EFFICIENCY CAMPAIGN**

**I. Introduction**

In this decision, we reallocate remaining Commission-awarded funding previously awarded to the Department of Consumer Affairs (DCA) for its *Flex Your Power* energy efficiency campaign to Southern California Edison (Edison) with the expectation and understanding that Edison use of the *Flex Your Power* trademarks is subject to per use approval and authorization by DCA in order to carry out an uninterrupted and consistent campaign.

The Commission chose Edison to oversee DCA in its performance of the CPUC-funded aspects of the *Flex Your Power* campaign. As such, Edison has been involved in the day-to-day program details. Edison also applied to work collaboratively with the *Flex Your Power* campaign as part of a statewide competitive bidding process culminating in Decision (D.) 02-03-056. We opted at that time to award the funding directly to DCA, rather than to give it to Edison or any other applicant. It appears we no longer have that option.

The *Flex Your Power* campaign is an important and useful aspect of the Commission's statewide energy efficiency program. To minimize interruption

and make every effort to have the portion of the *Flex Your Power* campaign we funded go forward as scheduled, we approve the transfer of statewide energy efficiency funding to Edison to carry out the program under the *Flex Your Power* name and to make such uses of that name as are authorized by DCA. We approve no substantive modification in program details, and anticipate that the look and feel of the campaign will continue unchanged.

## **II. Background**

We have approved nearly \$300 million in statewide and local energy efficiency programs for 2002-03. In D.02-03-056, we approved a grant of Public Goods Charge (PGC) ratepayer funds to the DCA to provide marketing and outreach services in connection with statewide energy efficiency programs. The DCA funding was \$8.057 million, and was to cover *Flex Your Power* ads and other publicity designed to promote energy efficiency in California.<sup>1</sup>

We appointed Edison to administer the program statewide, because each statewide and local energy efficiency program carried out by a non-utility has a utility administrator.<sup>2</sup> DCA stated that it would be returning unspent funds already advanced to it totaling \$2,817,993.00. In addition, DCA stated that it would decline to accept the remaining balance of \$1,824,322.00.

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<sup>1</sup> The DCA has other funding for the *Flex Your Power* campaign totaling almost \$50 million. This decision only affects the \$8.057 million in Commission-administered PGC funding devoted to the campaign.

<sup>2</sup> This administration arrangement is an interim one pending the Commission's consideration of the appropriate means of administering PGC-funded energy efficiency programs in the future.

In early July 2002, DCA filed and served a notice stating that it was terminating its contract and returning the approved funds. DCA stated that it would be returning unspent funds already advanced to it totaling \$4,642,315.<sup>3</sup>

Edison applied for funding to carry out statewide efficiency marketing and outreach in its proposal dated December 14, 2001. It sought \$10.057 million for its proposal, in which it planned to coordinate with other utilities to build on the *Flex Your Power* effort.<sup>4</sup> While we opted in D.02-03-056 to award the funding directly to the DCA (with Edison acting solely as administrator while DCA directly carried out the program), the program we approved there was quite similar to the one Edison proposed.

Both Edison's proposed program and the one we funded required substantial coordination between the DCA and the utilities. For example, we noted in funding DCA instead of the individual investor owned utilities that "DCA has worked collaboratively with the IOUs in the past and plans to continue doing so."<sup>5</sup> We also required DCA "to obtain information [about other local and statewide programs] from program providers to place on the DCA

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<sup>3</sup> According to DCA, this amount is the entire amount of the second advance. The Commission allowed such advances in D.02-03-056: "We cannot grant DCA the entire year's funding up-front, but the DCA is eligible to request advance disbursements from Edison if it can document essential program expenditures before a quarterly payment is due. That is, if any essential *Flex Your Power* advertisement or campaign will not occur unless funds are released early, an advance may be allowed, provided DCA and Edison give five days advance notice to the Commission's Energy Division of such plan." D.02-03-056, *mimeo.*, at 55.

<sup>4</sup> 2002 Energy Efficiency Program, Statewide Crosscutting Integrated Statewide Energy Efficiency Marketing and Outreach Program, Southern California Edison, dated December 14, 2001 (Edison Proposal).

<sup>5</sup> D.02-03-056, *mimeo.*, at 36.

website.”<sup>6</sup> We provided that the content of the DCA’s energy efficiency message must reflect the “input of Edison.” We also appointed Edison to administer the *Flex Your Power* program because DCA “has worked closely with Edison in the past . . . .”<sup>7</sup>

Moreover, Edison is closely involved with the current DCA campaign, and time is of the essence in order to carry out the campaign on schedule. According to the DCA filing,

Southern California Edison has been integrated and involved in all related planning decisions, to date. Edison has also coordinated and communicated with the other investor owned utilities on the approval of the media creative [sic] currently proposed.

The development and focus group research for the next media campaign . . . has been completed. Edison has approved the media messaging and creative concept. [Grey] has reserved airtime for these spots. . . .

### **III. Discussion**

We have no choice but to choose another provider to carry out the intention and message of the PGC-funded *Flex Your Power* energy efficiency campaign, since DCA is now unavailable for this purpose. We have already subjected the statewide energy efficiency marketing and outreach campaign to competitive bid, so we are in the position to reallocate the funding to another bidder.

We reallocate DCA’s money to Edison to carry out a marketing and outreach energy efficiency campaign consistent with D.02-03-056 and this

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<sup>6</sup> *Id.* at 56.

<sup>7</sup> *Id.* at 55.

decision. It is the Commission's expectation and understanding that DCA will cooperate in authorizing Edison to make reasonable uses of the *Flex Your Power* marks in order to continue the CPUC-funded portion of the *Flex Your Power* campaign. Edison is already administering the program, sought statewide funding in December 2001 to do similar work, has worked with DCA in the past, and is involved in current planning for the campaign. Moreover, time is of the essence so that the campaign can occur during the hottest months.

#### **IV. Conclusion**

The Commission should reallocate to Edison no more than \$5,199,315 of the funds earmarked for DCA to carry out a marketing and outreach campaign consistent with D.02-03-056 and this decision. It is the expectation and understanding that the DCA will authorize Edison to make reasonable uses of the *Flex Your Power* marks to continue the PGC-funded *Flex Your Power* energy efficiency program consistent with D.02-03-056 and this decision.

#### **V. Comments on Draft Decision**

This is an expanded 311 decision, but the 30-day period may be reduced or waived because there is an unforeseen emergency situation. In this case, we have just learned that the DCA cannot continue with its program. Because time is of the essence so that the program can go forward during the hottest months, we shorten the comment period. Comments were due on July 15, 2002. No reply comments were allowed.

DCA submitted comments regarding the *Flex Your Power* trademark which are reasonable and therefore reflected in this decision. It clarified its submission regarding the affected amount of funding (a point that it did not originally explain fully) and we have made changes accordingly. Finally, DCA asks us to deem its expenditures to date to be appropriate and reimbursable, which we do

not do here as the request is premature. Once DCA submits the report contained in Ordering Paragraph 2, we will consider the appropriateness of DCA's expenditures. Edison filed comments supportive of the decision. Women's Energy Matters filed comments that were critical but we believe the original decision adequately addresses them the matters raised and make no changes.

### **Findings of Fact**

1. DCA cannot continue the PGC-funded portion of its *Flex Your Power* campaign.
2. Edison is already administering the program, sought statewide funding in December 2001 to do similar work, has worked with DCA in the past, and is involved in current planning for the campaign.
3. Time is of the essence so that the campaign can occur during the hottest months.
4. The Commission put out the statewide energy efficiency marketing and outreach funding for competitive bid.

### **Conclusion of Law**

The Commission should reallocate to Edison at least no more than \$5,199,315 of the funds earmarked for DCA to carry out a marketing and outreach campaign consistent with D.02-03-056 and this decision. It is the expectation and understanding that the DCA will authorize Edison to make reasonable uses of the *Flex Your Power* marks to continue the PGC-funded *Flex Your Power* energy efficiency program consistent with D.02-03-056 and this decision.

## INTERIM ORDER

### **IT IS ORDERED** that:

1. The California Department of Consumer Affairs (DCA) shall return all unspent PGC funds, totaling no more than \$2,817,993, to Southern California Edison (Edison), so that Edison may take over the portion of the *Flex Your Power* campaign funded by this Commission and to use the *Flex Your Power* marks for that purpose to the extent that the DCA authorizes such use. It is the expectation and understanding of the Commission that DCA will cooperate with Edison in making this transition, including executing a written agreement authorizing Edison to use the *Flex Your Power* logo and other related materials on reasonable terms.
2. DCA shall file and serve a report describing its expenditures to date no later than 45 days after the Commission issues this decision.
3. Edison shall take over the PGC-funded portion of the *Flex Your Power* campaign consistent with D.02-03-056 and may make such uses of the *Flex Your Power* marks as are authorized by DCA.

4. Edison shall immediately begin to carry out the *Flex Your Power* program functions, including those that must occur immediately in order for the advertising to go forward as scheduled, as authorized by the DCA and as soon as a Use Agreement with the DCA granting Edison permission to use the Department's mark is executed.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners